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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,766	09/17/2003	Ellis B. Nary	NEB-10002/02	4138

7590

03/16/2005

Ellis B Nary  
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EXAMINER

KIM, CHRISTOPHER S

ART UNIT PAPER NUMBER

3752

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/664,766

Applicant(s)

NARY, ELLIS B.

Examiner

Christopher S. Kim

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Response to Amendment*

1. The response filed December 13, 2004 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the other end" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "said other end" in lines 8-9. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the air" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the surface" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the water" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the pool" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the wall" in 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the other end" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Regarding claims 1 and 12, it is uncertain whether applicant is claiming the combination of a fountain, pool and water or the subcombination of a fountain. The preamble of the claims recite a "fountain", the but the body of the claims recite limitations directed to the pool and water level.

### ***Claim Rejections - 35 USC § 102***

3. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams (3,318,528).

Williams discloses a fountain comprising: a vertical 45; a horizontal water conduit (portion of conduit 45 connected to receptacle 17); a brace 47; a fountainhead 23.

4. Claims 1, 12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Vickroy (2,621,968).

Vickroy discloses a fountain comprising: a support structure T; a horizontal water conduit 12; a brace member M; a fountainhead S.

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5. Claims 1-5 and 11-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gellmann (3,121,235).

Gellmann discloses a fountain comprising: a support structure 16; a horizontal water conduit 12; a brace member 48; a fountainhead (20 or 60); valve means 64.

### ***Claim Rejections - 35 USC § 103***

6. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gellmann (3,121,235).

Gellmann discloses the limitations of the claimed invention with the exception of the valve means being positioned in the horizontal water conduit. Providing the valve means in the horizontal water conduit is a mere relocation of parts. It would have been obvious to one having ordinary skill in the art at the time the invention was made to position the valve means in the horizontal water conduit, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

### ***Response to Arguments***

7. Applicant's arguments filed December 13, 2004 have been fully considered but they are not persuasive. Applicant's arguments are not commensurate in scope with the claimed invention.

### ***Conclusion***


8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Christopher S. Kim  
Primary Examiner  
Art Unit 3752

CK